

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 235

HOUSE BILL 2097

AN ACT

AMENDING SECTION 49-234, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-234, Arizona Revised Statutes, is amended to
3 read:

4 49-234. Total maximum daily loads; implementation plans

5 A. The department shall develop total maximum daily loads for those
6 navigable waters listed as impaired pursuant to this article and for which
7 total maximum daily loads are required to be adopted pursuant to 33 United
8 States Code section 1313(d) and the regulations implementing that statute.
9 The department may estimate total maximum daily loads for navigable waters
10 not listed as impaired pursuant to this article, for the purposes of
11 developing information to satisfy the requirements of 33 United States Code
12 section 1313(d)(3), only after it has developed total maximum daily loads for
13 all navigable waters identified as impaired pursuant to this article or if
14 necessary to support permitting of new point source discharges.

15 B. In developing total maximum daily loads, the department shall use
16 only statistical and modeling techniques that are properly validated and
17 broadly accepted by the scientific community. The modeling technique may
18 vary based on the type of water and the quantity and quality of available
19 data that meets the quality assurance and quality control requirements of
20 section 49-232. The department may establish the statistical and modeling
21 techniques in rules adopted pursuant to section 49-232, subsection C.

22 C. Each total maximum daily load shall:

23 1. Be based on data and methodologies that comply with section 49-232.
24 2. Be established at a level that will achieve and maintain compliance
25 with applicable surface water quality standards.

26 3. Include a reasonable margin of safety that takes into account any
27 lack of knowledge concerning the relationship between effluent limitations
28 and water quality. The margin of safety shall not be used as a substitute
29 for adequate data when developing the total maximum daily load.

30 4. Account for seasonal variations that may include setting total
31 maximum daily loads that apply on a seasonal basis.

32 D. For each impaired water, the department shall prepare a draft
33 estimate of the total amount of each pollutant that causes the impairment
34 from all sources and that may be added to the navigable water while still
35 allowing the navigable water to achieve and maintain applicable surface water
36 quality standards. IN ADDITION, THE DEPARTMENT SHALL DETERMINE DRAFT
37 ALLOCATIONS AMONG THE CONTRIBUTING SOURCES THAT ARE SUFFICIENT TO ACHIEVE THE
38 TOTAL LOADINGS. The department shall provide public notice and allow for
39 comment on each draft estimate AND DRAFT ALLOCATION and shall prepare written
40 responses to comments received on the draft estimates AND DRAFT ALLOCATIONS.
41 The department shall publish the determinations of total pollutant loadings
42 that will not result in impairment AND THE DRAFT ALLOCATIONS AMONG THE
43 CONTRIBUTING SOURCES THAT ARE SUFFICIENT TO ACHIEVE THE TOTAL LOADING that
44 it intends to submit initially to the regional administrator, along with a
45 summary of the responses to comments on the estimated loadings AND

1 ALLOCATIONS, in the Arizona administrative register at least forty-five days
2 before submission of the loadings AND ALLOCATIONS to the regional
3 administrator. NOTWITHSTANDING THIS SUBSECTION, DRAFT ALLOCATIONS SHALL BE
4 SUBMITTED TO THE REGIONAL ADMINISTRATOR ONLY IF THAT SUBMISSION IS REQUIRED
5 BY THE RULES THAT IMPLEMENT 33 UNITED STATES CODE SECTION 1313(d).

6 E. Publication of the loadings AND ALLOCATIONS in the ARIZONA
7 administrative register is an appealable agency action pursuant to title 41,
8 chapter 6, article 10 that may be appealed by any party that submitted
9 written comments on the estimated loadings AND ALLOCATIONS. If the
10 department receives a notice of appeal of a loading AND ALLOCATION pursuant
11 to section 41-1092, subsection B 41-1092.03 within forty-five days of the
12 publication of the loading AND ALLOCATIONS in the Arizona administrative
13 register, the department shall not submit the challenged loading AND
14 ALLOCATIONS to the regional administrator until either the challenge to the
15 loading AND ALLOCATION is withdrawn or the director has made a final
16 administrative decision pursuant to section 41-1092.08.

17 ~~E. After each final loading pursuant to subsection D of this section~~
18 ~~is adopted and consistent with subsection F of this section, the department~~
19 ~~shall determine draft allocations among the contributing sources that are~~
20 ~~sufficient to achieve the total loading established pursuant to subsection~~
21 ~~D of this section. The department's proposed determination of allocations~~
22 ~~shall be subject to public notice and comment. The department shall prepare~~
23 ~~written responses to comments received on the draft allocations. After~~
24 ~~consideration of public comment received, the department shall publish the~~
25 ~~allocations and a summary of the responses to comments in the Arizona~~
26 ~~administrative register. The publication shall occur at least forty-five~~
27 ~~days before submission of the allocations to the regional administrator, if~~
28 ~~such submission is required by the rules implementing 33 United States Code~~
29 ~~section 1313(d). Publication of the allocations in the Arizona~~
30 ~~administrative register is an appealable agency action pursuant to title 41,~~
31 ~~chapter 6, article 10 that may be appealed by any party that submitted~~
32 ~~written comments on the draft allocations. If the department receives a~~
33 ~~notice of appeal of an allocation pursuant to section 41-1092, subsection B~~
34 ~~within forty-five days of the publication of the allocation in the Arizona~~
35 ~~administrative register, the department shall not take further action on the~~
36 ~~challenged allocation, or submit it to the regional administrator if such~~
37 ~~submission is required by the rules implementing 33 United States Code~~
38 ~~section 1313(d), until either the challenge to the loading is withdrawn or~~
39 ~~the director has made a final administrative decision pursuant to section~~
40 ~~41-1092.08.~~

41 F. The department shall make reasonable and equitable allocations
42 among sources when developing total maximum daily loads. At a minimum, the
43 department shall consider the following factors in making allocations:

44 1. The environmental, economic and technological feasibility of
45 achieving the allocation.

1 2. The cost and benefit associated with achieving the allocation.

2 3. Any pollutant loading reductions that are reasonably expected to
3 be achieved as a result of other legally required actions or voluntary
4 measures.

5 G. For each total maximum daily load, the department shall establish
6 a TMDL implementation plan that explains how the allocations and any
7 reductions in existing pollutant loadings will be achieved. Any reductions
8 in loadings from nonpoint sources shall be achieved voluntarily. The
9 department shall provide for public notice and comment on each TMDL
10 implementation plan. Any sampling or monitoring components of a TMDL
11 implementation plan shall comply with section 49-232.

12 H. Each TMDL implementation plan shall provide the time frame in which
13 compliance with applicable surface water quality standards is expected to be
14 achieved. The plan may include a phased process with interim targets for
15 load reductions. Longer time frames are appropriate in situations involving
16 multiple dischargers, technical, legal or economic barriers to achieving
17 necessary load reductions, scientific uncertainty regarding data quality or
18 modeling, significant loading from natural sources or significant loading
19 resulting from discharges or activities that have already ceased.

20 I. For navigable waters that are impaired due in part to historical
21 factors that are difficult to address, including contaminated sediments, the
22 department shall consider those historical factors in determining allocations
23 for existing point source discharges of the pollutant or pollutants that
24 cause the impairment. In developing total maximum daily loads for those
25 navigable waters, the department shall use a phased approach in which
26 expected long-term loading reductions from the historical sources are
27 considered in establishing short-term allocations for the point sources.
28 While total maximum daily loads and TMDL implementation plans are being
29 completed, any permits issued for the point sources are deemed consistent
30 with this article if the permits require reasonable reductions in the
31 discharges of the pollutants causing the impairment and are not required to
32 include additional reductions if those reductions would not significantly
33 contribute to attainment of surface water quality standards.

34 J. After a total maximum daily load and a TMDL implementation plan
35 have been adopted for a navigable water, the department shall review the
36 status of the navigable water at least once every five years to determine if
37 compliance with applicable surface water quality standards has been achieved.
38 If compliance with applicable surface water quality standards has not been
39 achieved, the department shall evaluate whether modification of the total
40 maximum daily load or TMDL implementation plan is required.

APPROVED BY THE GOVERNOR MAY 20, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2002.

Passed the House March 21, 2002,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 24, 2002,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

H.B. 2097

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

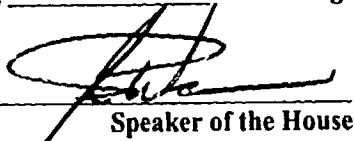
Secretary of State

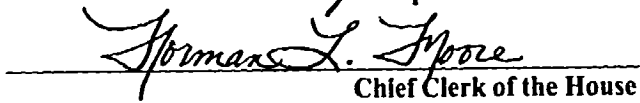
HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 15, 2002,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting


Speaker of the House

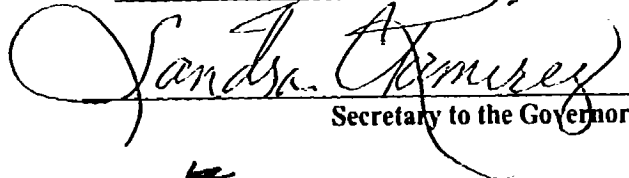

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of May, 2002

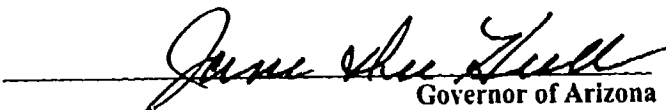
at 3:00 o'clock P M.


Secretary to the Governor

Approved this 20th day of

May, 2002,

at 10:16 o'clock A M.


Governor of Arizona

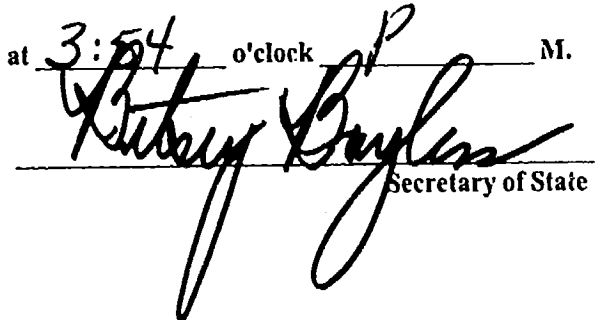
H.B. 2097

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2002,

at 3:54 o'clock P M.


Secretary of State